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Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
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Proposals and contributions received from Governments

Austria and United Kingdom of Great Britain and Northern Ireland: working paper on key prevention elements to be included in the United Nations Convention against Corruption

I. Introduction

1. The present paper tries to provide a structure for a possible chapter on prevention within the United Nations Convention against Corruption for consideration by the Informal Preparatory Meeting. The paper draws on existing international instruments, such as the Council of Europe conventions, the 1996 Inter-American Convention against Corruption of the Organization of American States, the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development, as well as the 1999 Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption, the Anti-Corruption Tool Kit produced by the United Nations and information from Transparency International.

II. Prevention

A. National policy coherence

Rationale

2. Tackling corruption requires a holistic approach. Successes against corruption in one respect can be undermined or negated by failure to address other areas, in particular where corruption is endemic in a country. Where such conditions prevail, Governments need to ensure a coherent and strategic approach.

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Proposal

3. The convention should encourage States to take action, to the extent necessary, to ensure that measures to tackle corruption are coherent and coordinated, both in planning and implementation--including, where appropriate, the development of a national anti-corruption strategy.

B. The public service

1. Strengthening public service management

Rationale

4. The public service is fundamental to good governance. Holders of public office (including elected officials and in particular ministers) should act solely in terms of the public interest. They should not do so in order to gain undue benefits for themselves, their families or their friends. The keystones of public service are selflessness, integrity, neutrality/objectivity, accountability, openness, honesty and leadership. Corruption flourishes where the public service lacks such an ethos, where public servants are poorly remunerated and where appointments are not based on objective professional merit. Governments need public services that are merit-based, ethical, professional and non-partisan, managed with appropriate recruitment and retention systems (including adequate pay) and transparent arrangements for promoting ethical conduct (including codes/rules of conduct and asset declaration where the potential for conflicts of interest arises) and appropriate sanctions for breaches.

Proposal

5. The convention should require Governments to take the necessary measures to ensure that the management of the public service shall be on the basis of fundamental principles of public service (as specified either in the body of the convention or by way of a protocol). The convention should also require Governments to adopt measures to reduce existing or future opportunities for corruption within the public service. Such measures could focus on, inter alia:

(a) Use of a merit-based system for recruitment and promotion;

(b) Adoption, implementation and enforcement of a code of conduct for the public service (see A/AC.261/IPM/4, annex);

(c) Asset declarations by public servants in cases of potential conflict of interest;

(d) Job rotation systems;

(e) Adequate salaries;

(f) Requirement to report corruption cases;

(g) Education and training programmes for public servants to enable them to meet the requirements of the correct and honourable fulfilment of public functions;

(h) Establishment of a public service commission;

(i) Ombudsmen;

(j) Administrative measures (for example, appropriate public service disciplinary arrangements; withdrawal of licences or permits; disqualification or suspension).

2. Efficient delivery of public services

Rationale

6. Any strategy against corruption needs to address the question of bribes attached to public services, in particular as this is the "face" of corruption that members of the public will be exposed to most often. Efforts need to be made to reduce the opportunity for bribes in relation to services through measures aimed at keeping discretion to a minimum and improving the management and delivery of such services.

Proposal

7. The convention should require States to take measures to reduce the opportunity for corruption in the delivery of services to the public. Measures could include, inter alia:

(a) Limiting individual discretion of officials with respect to decisions on services;

(b) Increasing the efficiency of the process for the delivery of services;

(c) Providing for an oversight and complaints mechanism with respect to the delivery of services.

3. Transparent public procurement

Rationale

8. Public procurement provides major opportunities for corruption, both active and passive. Corruption is more likely to occur in conditions where contracts can be awarded without transparent or competitive procedures, where there is limited availability of information on contracts or where other elements of due process, such as clear selection criteria and bidding rules, are not followed. There is a need for transparency and predictability in public procurement. The adoption of sanctions against contractors found to have acted corruptly also offers a potentially significant deterrent effect.

Proposal

9. The convention should require Governments to take the necessary measures to ensure that all public procurement is undertaken by trained staff in accordance with transparent procurement rules, based on openness and competition to secure value for money, including, inter alia:

(a) Public distribution of information on contracts;

(b) Use of predetermined selection criteria and bidding rules.

4. Public financial management

Rationale

10. The management of public finances needs to be transparent and predictable, follow due process and be accountable. This includes all aspects of the budget process, key allocation decisions, the approval process, subsequent reporting and accounting and the timely and effective oversight by independent audit authorities.

Proposal

11. The convention should require Governments to take the necessary measures to ensure the existence of, and compliance with, transparent processes for the management of public finances, including:

(a) The preparation and approval of the national budget;

(b) Timely reporting on expenditure;

(c) Timely submission of accounts to oversight authorities, which should have a status and independence sufficient to ensure effective and objective scrutiny and, where necessary, adequate powers of remedy.

5. Impartial, effective and reliable judiciary

Rationale

12. An impartial, effective and reliable judiciary is essential to tackle corruption. The judiciary needs to be able to enjoy adequate autonomy while being accountable. There needs to be transparency and predictability in all aspects of the judicial process.

Proposal

13. The convention should require Governments to take appropriate measures to reduce any opportunities for judicial corruption, consistent with preserving judicial independence.

C. Business/commerce

1. Corporate governance

Rationale

14. A sound framework of corporate governance for private sector business activity is an essential part of the national economic management architecture, encourages propriety in business practices and, in particular, helps to provide transparency and accountability at the interface between the private sector and the public sector.

Proposal

15. The convention should require Governments to take the necessary measures to ensure an adequate framework for corporate governance in the private sector, including:

(a) Arrangements for the registration of companies (and for such registers to be open to public scrutiny);

(b) Internationally accepted standards of accounting, reporting and audit;

(c) Systems for investigation by the relevant authorities when appropriate;

(d) Development of standards and procedures to safeguard integrity, such as codes of conduct for professions, in particular, lawyers, notaries public, tax consultants and accountants.

2. Financial sector regulation

Rationale

16. Government's responsibility to ensure a sound regulatory framework for the financial sector is also an essential prerequisite for protection against corruption in financial transactions. This should embrace the private sector and parastatals.

Proposal

17. The convention should require Governments to take the necessary measures to ensure an adequate supervisory framework for financial institutions based on the principles of transparency, accountability and sound corporate governance; and appropriate supervisory institutions (with adequate autonomy, capacity, powers and penalties), with appropriate capacity for international collaboration on cross-border financial transactions.

D. Civil society

Involving civil society

Rationale

18. Responsible scrutiny of public bodies and services by organizations outside government contributes to strengthening accountability, raises the likelihood that corruption will be exposed and provides a voice for those who may otherwise have no, or limited, avenues for redress. An active and responsible civil society, including a free media, should be regarded as an ally of government in helping it to deliver outcomes sought by the public.

Proposal

19. The convention should require Governments to take measures to enable civil society, where appropriate, to engage with and contribute to relevant mechanisms and processes that seek to ensure accountability in public life and services. In addition, Governments should take measures to promote public information activities that contribute towards non-tolerance of corruption, as well as programmes of public education, including through school curricula.

20. The role of the civil society can be strengthened by:

(a) Including the public in decision-making processes;

(b) The existence of public reporting systems (that is, ensuring that public bodies have appropriate obligations for public reporting—and systems for doing so—including legislation establishing rights to access to information);

(c) Protection of whistle-blowers;

(d) Public support for networks of non-governmental organizations.

E. Holders of public elected office

Rationale

21. The integrity of all individuals elected to public office is a prerequisite for the conduct of good government. Holders of elected office at all levels should be subject to appropriate forms of scrutiny that can ensure honesty and accountability.

Proposal

22. The convention should require Governments to establish and maintain appropriate systems for the scrutiny of elected public officials. These may include:

(a) Declaration of assets;

(b) Ombudsmen;

(c) Parliamentary oversight committees.

F. Political party funding

Rationale

23. Transparent funding of political parties is essential to guard against corruption within the political process and among high-level government officials. Rules need to be clear, and abided by.

Proposal

24. The convention should require Governments to take the necessary measures to ensure appropriate rules for political party funding that serve to, inter alia, prevent conflicts of interest and the exercise of improper influence; preserve the integrity of political structures and processes; prevent the use of funds acquired through illegal and corrupt practices to finance political parties; and enshrine the concept of transparency in the funding of political parties. Measures may include:

(a) Requiring the declaration of donations exceeding a specified limit;

(b) Ensuring the existence of effective means to adjudge complaints and enforce remedies;

(c) Establishing a code of conduct for political parties;

(d) Requiring clear accounting and book-keeping requirements, as well as the requirement to publish finances.